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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

File: [REDACTED] Office: Texas Service Center

Date: MAR 19 2003

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

IN BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, an educational institution, seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as a instructor/researcher of traditional Chinese medicine. The director determined that the petitioner had not established the beneficiary's eligibility for the classification sought.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available ... to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if-

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The regulations at 8 C.F.R. § 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced

degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

As used in this section, the term "academic field" means a body of specialized knowledge offered for study at an accredited United States university or institution of higher education. 8 C.F.R. § 204.5(i)(2). The petition was filed on October 17, 2001 and seeks to classify the beneficiary as an outstanding instructor/researcher of traditional Chinese medicine. Part 6 of the Form I-140 states that the beneficiary's job entails "[t]eaching courses and conducting research on traditional Chinese medicine." A letter from counsel accompanying the petition referred to the petitioning entity as "an institution of higher learning."

8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the beneficiary must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner submits evidence pertaining to the following criteria.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

President, Atlantic Institute of Oriental Medicine ("ATOM"), states that the beneficiary's employment with ATOM and the China Acupuncture Academy satisfies this criterion.

We find, however, that employment does not constitute membership in an association in the academic field requiring outstanding achievement.

A letter from Professor [REDACTED] President of the Chinese Medicine and Acupuncture Association of Canada ("CMAAC"), states: "When [the beneficiary] migrated to Canada in 1998, I immediately invited him to hold the position of the Director of the CMAAC. Since then he has been actively participating in all sorts of activities of the Association." The petitioner, however, offers no documentary evidence showing that CMAAC requires outstanding achievements of its members.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as an instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of international recognition. Instead, a petitioner must demonstrate that the alien's international recognition resulted in his selection to serve as a judge of the work of others in his field. Further, the judging must involve other accomplished professionals in the research field and be at the international level.

In addressing the beneficiary's work as a judge, the letter from [REDACTED] President of CMAAC, states: "In addition, [the beneficiary] has been in charge of the Academic Committee of the Association, which is aimed at initiating and organizing seminars and conferences for academic exchanges as well as reviewing and commenting on the research papers." The petitioner, however, offers no further documentary evidence to establish the beneficiary's participation as a reviewer or to show that he was judging individuals at the international level.

A "notarized certificate" in the record states that the beneficiary "was a member of exams affairs of China International Acupuncture Exams Center from 1990 to 1997." No further details of the beneficiary's involvement were provided.

The petitioner has offered only brief, vague claims from selected witnesses rather than first-hand evidence of the beneficiary's participation as a judge. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record fails to show that the beneficiary was involved in judging the work of others in his academic field at the international level.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

The petition was accompanied by letters from Professor Weiheng Li, Vice President of the Chinese Association of Acupuncture and Moxibustion, Professor Yongyan Wang, President of the China Academy of Traditional Chinese Medicine, and Professor Junying Geng, Chairman of

the Department of Acupuncture at the Beijing University of Chinese Medicine and Pharmacology. These witnesses all have direct ties to institutions where the beneficiary has previously studied or worked. In addressing the beneficiary's research contributions, the three of their letters contained the following identical statements:

The result of his research at the Beijing University of Chinese Medicine and Pharmacology has been published in several books by prestigious scientific publishers, and in several articles by leading academic journals with international circulation [sic].

* * *

[The beneficiary] is the first person to provide clear guidance on how to determine the exact location of the "Back-Shu" [sic] acupoints in clinical practice based on the theories of traditional Chinese medicine.

All three letters incorrectly punctuated the quotation marks surrounding "Back-Shu" in the same manner as shown above. While these three professors, in signing their letters, are clearly supportive of the beneficiary, it appears that, based on the identical wording and irregular punctuation, the professors did not independently formulate the wording of their letters, thus detracting from the evidentiary weight of their claims.

In describing the beneficiary's method for determining Back-Shu acupoints [REDACTED] letter states: "[The beneficiary's] method enables medical doctors to find the exact locations of the twelve Back-Shu Points and effectively worked to prevent the injury caused by inserting acupuncture needles into the wrong location. His research was the first in China to solve the problem."¹

In describing a pain relief method developed by the beneficiary, [REDACTED] letter states:

[The beneficiary] designed a new procedure to insert only one needle to acupoint ZHONGZHU (TE3) located in the hand of the patient to treat acute injury. Then the injured area should be gently pressed and rubbed with the palm, in order to relax the deep-part muscles in the injured area. Then, flicking and poking manipulations with the thumb should be made to push the damaged and dislocated nerves back to their normal positions.

* * *

The new method developed by [the beneficiary] could make a patient completely recover and return to normal life after serious injuries within only two days. It is far more effective than the old method...

¹ Dr. Wang states that there are twelve "Back-Shu" acupoints on the back and waist areas of the human body appropriate for inserting acupuncture needles.

Whatever the tradition from which the beneficiary's findings and methods derive, their effect on the human body can be objectively observed and measured using the same objective, scientific standards as "Western" medicine. [REDACTED] does not specifically identify the "serious injuries" that the beneficiary's one-needle method has purportedly successfully treated. Nor are [REDACTED] statements accompanied by scientific data or objective statistics to support the assertion that patients "completely recover" after being treated by the beneficiary's method. [REDACTED] indicates that [the beneficiary's] methods function by affecting the distribution of Qi (vital internal energy). Outside of the field of traditional Chinese medicine, this force is generally understood to be mythical, with no empirical corroboration of its existence. In this case, no objective, scientific data supports the assertions of the petitioner's witnesses.

The fact that the beneficiary was the first to offer "guidance" regarding the Back-Shu acupoints or to develop a one-needle acupoint procedure for pain relief carries little weight. Of far greater importance in this proceeding is the importance to the overall field of the beneficiary's contributions. The petitioner has not provided sufficient evidence that the beneficiary's research, to date, has consistently attracted significant attention from independent scientific researchers. The petitioner must show not only that the beneficiary's findings are important to individuals from the institutions where he has previously studied or worked, but throughout the greater research community. If the beneficiary's work is not widely praised outside his former employers and educational institutions, then it cannot be concluded that he has earned international recognition.

In regards to the beneficiary's publications, the publication of his work may serve as evidence of its originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the beneficiary's conclusions. For example, frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the beneficiary's work. The petitioner, however, offers no evidence demonstrating heavy independent citation of the beneficiary's articles (which the witnesses claim appeared in "leading academic journals with international circulation"). The beneficiary's publications will be further addressed under a subsequent criterion.

The absence of substantial independent testimony raises doubt as to the extent of the beneficiary's reputation in the field. In order to qualify for the classification sought, the petitioner must demonstrate that the beneficiary is recognized not only by those institutions where he has studied or worked, but throughout the international research community as a whole.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The petitioner submits evidence of the beneficiary's co-authorship of published journal articles and books. Counsel states: "The fact that all of [the beneficiary's] research articles have been published in some of the most prestigious medical journals or have been published as books, indicates that he has been recognized internationally as outstanding in the field of traditional Chinese medicine. Counsel asserts that the beneficiary's book, Selecting the Right Acupoints, "was published by the

New World Press (Beijing, China) in 1995 and has sold over 50,000 copies in more than thirty countries worldwide." The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Independent evidence showing the extent of the circulation of publications featuring the beneficiary's work has not been provided. Counsel contends that the beneficiary's published works are internationally circulated but offers no evidence except for statements from witnesses selected by the petitioner. These statements cannot establish, first-hand, that the beneficiary's publications enjoy significant international distribution. Without evidence of their significant international distribution from independent sources such as media guides or the publishers themselves, the petitioner has failed to establish that the beneficiary's published works satisfy this criterion.

We further note that the publication of scholarly articles is not automatic evidence of international recognition; we must also consider the field's reaction to those articles. Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the beneficiary's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work. This is a universally accepted practice among academic scholars and researchers. Numerous independent citations would provide firm evidence that other researchers have been influenced by the beneficiary's work. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact - and international recognition - a researcher's work can have, if that research has not significantly influenced the field. In this case, the petitioner has offered no evidence demonstrating frequent independent citation of the beneficiary's published research articles.

Beyond the decision of the director, we note that the petitioner has not provided evidence of its ability to pay to the beneficiary's \$32,000 salary.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the

organization which establishes the prospective employer's ability to pay the proffered wage.

In this case, the record contains no annual reports, federal tax returns, or audited financial statements from the petitioning entity.

On appeal, counsel argues that the director misapplied the law and pertinent regulations and ignored the petitioner's supporting evidence. In response to the director's assertion that the record contains no job offer, counsel states "such letter is attached to the petition." Review of the record, however, reveals no job offer letter, i.e., a letter from the petitioner addressed to the beneficiary that sets forth a binding offer of employment, including specific terms thereof. The initial submission includes a letter (dated October 4, 2001) addressed "To whom it may concern" which, over the course of seven paragraphs, discusses Chinese medicine in general, escalating health care costs, and the beneficiary's credentials. The final paragraph in the letter reads, in its entirety, "[the beneficiary] will be employed by [the petitioner] as a Researcher/Instructor. He will be paid at the rate of \$32,000 per year. His position with the [petitioner] will be permanent." This letter is not an offer of employment addressed to the beneficiary; it is a letter "to whom it may concern" which discusses (among other things) the petitioner's intention to employ the beneficiary. The letter does not constitute a formal offer of employment; indeed, it implies that the beneficiary has already accepted an offer made earlier. The record does not contain any documentation, pre-dating the petition's filing date, that initiated an employer-employee relationship between the petitioner and the beneficiary or otherwise extended a job offer from the petitioner to the beneficiary.

In the "Request for Additional Evidence" dated April 8, 2002, the director specifically informed the petitioner of this crucial omission, citing the regulatory criteria at 8 C.F.R. § 204.5(i)(3) and stating "[p]lease submit a job offer for the beneficiary." The petitioner's response to the request for evidence did not include the beneficiary's job offer letter and therefore the director's decision to deny the petition on this ground was not in error.

Counsel disputes the director's statement that "[t]here is no evidence that [the beneficiary] has published in other countries or that his works have been translated." Contrary to the director's statement, the record does contain evidence of published English versions of the beneficiary's works and therefore we withdraw the director's statement in this regard. While all of the beneficiary's published pieces appear to have originated in China, this would not have detracted from the beneficiary's satisfaction of 8 C.F.R. § 204.5(i)(3)(i)(F) if the petitioner were to have provided evidence of the publications' significant international distribution.²

Counsel faults the director for issuing a request for evidence pertaining to 8 C.F.R. § 204.5(i)(3)(iii)(C), but a review of the director's decision denying the petition reveals no discussion of the petitioner's failure to comply with the regulatory requirements for a private

² We acknowledge the petitioner's submission of educational materials prepared by the beneficiary for "Postgraduate Courses" he offered at the AcuMedic Foundation in London, England (in collaboration with the Beijing University of Chinese Medicine), but it has not been shown that these materials were published, circulated internationally, or utilized beyond the classes taught by the AcuMedic Foundation.

employer. The director noted the absence of a job offer for a “permanent position,” but we find that this statement would also be relevant to 8 C.F.R. § 204.5(i)(3)(iii)(B), which would apply directly to the petitioning entity. We note here that the documentation provided by the petitioning institution does not specifically mention a “tenured or tenure-track” teaching position. Regardless, this issue was not central to the director’s decision.

In this case, the petitioner has shown that the beneficiary is a talented instructor and researcher, who has won the respect of individuals from the institutions where he has worked, while possibly securing some minimal degree of international exposure for his work. The record, however, does not establish the beneficiary's international reputation as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.